

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Cause No. 2:15cv294
	)	
Sig Sauer Pistol, Model P238, .380 caliber,	)	
SN: 27B033559; and Smith & Wesson Revolver,	)	
Model 442, .38 caliber, SN: BSJ6673;	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT IN REM**

Plaintiff, United States of America, by its attorneys, David Capp, United States Attorney for the Northern District of Indiana, and Orest Szewciw, Assistant United States Attorney, brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

**NATURE OF THE ACTION**

1. This is an action to forfeit and condemn to the use and benefit of the United States of America pursuant to 18 U.S.C. § 924(d) the following described property: Sig Sauer Pistol, Model P238, .380 caliber, SN: 27B033559; and Smith & Wesson Revolver, Model 442, .38 caliber, SN: BSJ6673 (hereinafter defendant property"), for violation of 18 U.S.C. § 922(g)(1).

**THE DEFENDANT(S) IN REM**

2. Defendant property was seized on or about February 25, 2015, in Starke County, Indiana from Benny Giselsbach and is presently in the custody of the Bureau of Alcohol, Tobacco, Firearms and Explosives (AFT).

### JURISDICTION AND VENUE

3. Plaintiff brings this action in rem in its own right to forfeit and condemn the defendant property. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

4. This Court has *in rem* jurisdiction over the defendant property under 18 U.S.C. § 924(d).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this district and also pursuant to 28 U.S.C. §1395(b), because the defendant property was found within this district.

### FACTS

6. Benny Giselbach is a convicted felon, having been convicted of burglary in 1998 and of auto theft/receiving stolen auto parts in 2005, both in the Starke Circuit Court, Starke County, Indiana, both crimes being punishable by a term of imprisonment exceeding one year.

7. On or about February 25, 2015, Benny Giselbach was found in physical possession of the Defendant Property following a domestic disturbance call.

8. Defendant Property was owned by Benny Giselbach's wife with whom he resided. Defendant Sig Sauer pistol was kept in a safe to which Benny Giselbach had free access and which pistol he acknowledged often using. Defendant Smith & Wesson revolver was kept behind their bed on a magnetic wall mount which was readily accessible to Benny Giselbach.

9. The defendant property, prior to its seizure had been shipped or transported in interstate commerce in that the Sig Sauer pistol was manufactured in the state of Massachusetts and the Smith & Wesson revolver was manufactured in the state of New Hampshire.

### CLAIM FOR RELIEF

9. Pursuant to 18 U.S.C. § 922(g)(1), "It shall be unlawful for any person ... who has been

convicted in any court of ... a crime punishable by imprisonment for a term exceeding one year ... to ... possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” Pursuant to 18 U.S.C. § 924(d)(1), any firearm and ammunition involved or used in any knowing violation of 18 U.S.C. § 922(g)(1) shall be subject to seizure and forfeiture.

By reason of the facts set forth herein, the Defendant Property is properly condemned and forfeited to the United States of America pursuant to 18 U.S.C. § 924(d)(1).

WHEREFORE, the plaintiff requests that the defendant property be forfeited and condemned to the United States of America; that Warrant of Arrest In Rem be issued for defendant property; that the plaintiff be awarded its costs and disbursements in this action; and for such other and further relief as this court deems proper and just.

Respectfully submitted,

DAVID CAPP  
UNITED STATES ATTORNEY

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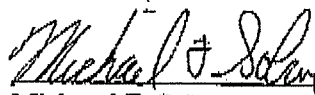
**VERIFICATION**

I, Michael F. Solan, and declare under penalty of perjury that I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); that I have read the foregoing Verified Complaint In Rem and know the contents thereof, and that the matters contained in the Verified Complaint are true to the best of my knowledge.

The sources of my knowledge and information are the official files and records of the ATF, along with information supplied to me by other law enforcement officers, as well as my investigation of this case.

I hereby verify and declare under the penalty of perjury that the foregoing is true and correct.

Dated: 08/10/15



Michael F. Solan  
Special Agent, ATF